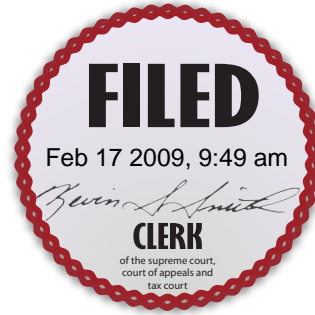


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JENNIFER ALAMILLO,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A05-0807-CR-430

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0512-FD-170

February 17, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Jennifer Alamillo appeals her three-year sentence for two counts of Class C felony theft. We affirm.

Issue

Alamillo raises one issue, which we restate as whether she was properly sentenced.

Facts

Beginning in 1993, Alamillo was employed at a law firm in Lake County. From January 1, 2004 until December 2, 2005, she embezzled over \$200,000 from the law firm.

On December 20, 2005, the State charged Alamillo with Class C felony theft for the transactions from January 1, 2004, until December 31, 2004, which totaled at least \$100,000; Class C felony theft for the transactions from January 1, 2005, until December 2, 2005, which totaled at least \$100,000; Class D felony theft for the transactions from January 1, 2003 to December 31, 2003; and Class D felony attempted theft for an incident that occurred on December 8, 2005. On May 16, 2008, Alamillo pled guilty to the two counts of Class C felony theft. The plea agreement called for the Class D felony charges to be dismissed and for the sentences to be capped at three years and for them to be served concurrently. On June 20, 2008, the trial court accepted Alamillo's guilty plea and sentenced her to three years executed on each count. The trial court ordered the sentences to be served concurrently. Alamillo now appeals.

Analysis

Alamillo points out that the trial court recognized as mitigating her lack of criminal history, her guilty plea and remorse, and the hardship the incarceration would be on her family.¹ She also acknowledges that the trial court considered as aggravating her employment relationship with the victim and the violation of that position of trust. She argues that her three year sentence “was the maximum sentence she could have received under the plea agreement accepted by the trial court. Therefore, the defendant contends that the trial court’s sentence of the defendant to three years in prison was an abuse of discretion.”² Appellant’s Br. p. 4.

As an initial matter, we note that Alamillo committed these crimes over a long period of time—from January 2004 until December 2005. On April 25, 2005, Indiana’s sentencing statutes changed from the presumptive sentencing scheme to the advisory sentencing scheme. See Anglemyer v. State, 868 N.E.2d 482, 487-88 (Ind. 2007); Ind. Code § 35-38-1-7.1. Neither party specifically addresses which statutory scheme is relevant to our analysis today. In fact, Alamillo appears to argue that the presumptive sentencing scheme applies and the State appears to argue that the advisory sentencing scheme applies. Because the sentencing statute in effect at the time a crime is committed governs the sentence for that crime, we will address the propriety of Alamillo’s sentence under both schemes. See Harris v. State, 897 N.E.2d 927, 928-29 (Ind. 2008).

¹ The trial court acknowledged this hardship on Alamillo’s family at the sentencing hearing, but not in its written order.

² Alamillo does not argue that her sentence is inappropriate.

Under the presumptive scheme,³ when a trial court deviates from a presumptive sentence, it is required to (1) identify all significant mitigating and aggravating circumstances; (2) state the specific reason why each circumstance had been determined to be mitigating or aggravating; and (3) articulate the court's evaluation and balancing of circumstances. Anglemyer v. State, 868 N.E.2d 482, 486 (Ind. 2007). Alamillo does not assert that the trial court improperly considered various aggravators or mitigators; instead, she seems to be challenging the balancing of those factors and the trial court's decision not to suspend her sentence.

The mitigators recognized by the trial court were Alamillo's lack of criminal history, guilty plea, and the hardship on her children. As aggravating, the trial court was very concerned about the violation of the position of trust that occurred when Alamillo repeatedly stole a significant amount of money from her longtime employer—in 2004 and 2005 she stole a total of \$221,000. At the sentencing hearing, the trial court balanced the aggravators and mitigators and determined that the proper sentence would have been the presumptive sentence of four years. The trial court recognized, however, that the plea agreement capped the sentence at three years and sentenced Alamillo accordingly. Without more, Alamillo has not established that the trial court abused its discretion in weighing the aggravators and mitigators.

In terms of the three-year executed sentence, the trial court specifically found that a suspended sentence would depreciate the seriousness of the crime. The trial court

³ Alamillo correctly makes no claim that her sentence violated Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004), which only applies to enhanced sentences. See Anglemyer, 868 N.E.2d at 486.

ordered that the sentence be served in the department of correction because the crime was “absolutely horrible.” Tr. p. 34. Alamillo has not established that the trial court abused its discretion in ordering her to serve an executed sentence.

As for review of the sentence under the advisory scheme, Alamillo does not claim that the trial court overlooked any aggravating or mitigating factors. To the extent she argues the factors identified by the trial court were improperly weighed, that claim is not valid. According to Anglemyer, “the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-Blakely statutory regime, a trial court can not now be said to have abused its discretion in failing to ‘properly weigh’ such factors.” Anglemyer, 868 N.E.2d at 491. Accordingly, this claim fails too.

Conclusion

Alamillo has not established that the trial court abused its discretion in sentencing her. We affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.